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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/064,350	07/03/2002	Timothy R. Hawes	71234-46	9613

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/064,350

**Applicant(s)**

HAWES, TIMOTHY R.

**Examiner**

Frank Vanaman

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13-19, 21, 25 and 30-39 is/are rejected.
- 7) ☒ Claim(s) 12, 20, 22-24, 26-29 and 40-51 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **Reopening of Prosecution**

1. In view of the Appeal Brief filed on January 11, 2005, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits ( 37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### **Status of Application**

- 2. Claims 1-7 and 9-51 are pending.
- 3. The allowability of claims 11, 18, 21, 38 and 39 is withdrawn in view of the newly discovered reference to Takahashi et al.

### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

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5. Claims 31-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Takahashi et al. (US 6,273,631, filed 11/1999). Takahashi et al. teach a mounting bracket for a vehicle wherein the bracket includes an elongated support arm (32) adapted to be mounted to a vehicle element and defining a longitudinal axis, a length-adjustable link connection (e.g., 4, 6, 7, 8, 10) having a first bracket portion (3) connected to the elongated arm and a second bracket portion (2) adapted to be rotatably connected (through mounting fastener 22) to a vehicle portion (not illustrated), wherein the offset spacing between the arm longitudinal axis and rotational axis may be adjusted by adjusting the length of the link, there being provided a releasable fastener (7, 8) which extends through respective first and second openings (11) in the bracket portions, each bracket having a face (4) with a serration, the serrations meshing when the fastener is not released, the serrations comprising a region of parallel, spaced serrations (either side of opening 11), the second bracket having a further (third) opening (interior of 20) which receives the mounting fastener (22), which may pass through a vehicle element, connected to a vehicle frame, such as an aperture or threaded aperture, the second bracket having a collar (20) which surrounds the third opening, and wherein an end plate (5) is connected to the collar, one side of the end plate forming a corresponding serrated face, the end plate further having a gusset (10) connecting the end plate and collar.

As regards the adaptability of the recited bracket, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

#### **Claim Rejections - 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-5, 13-19, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortvedt et al. (US 4,591,178, cited by applicant) in view of Takahashi et al. (cited above). Mortvedt et al. teach a fender assembly for a vehicle (10) including a longitudinal frame (12) and ground engaging wheels (16) further including a fender (20) having a linear cross section in a lateral direction (i.e., viewed in cross-section taken along a laterally extending plane), at least one elongated support arm (24-50) mounted to the fender and having a longitudinal axis, and a bracket assembly (38) mounted to the support arm and having a connector (42) for mounting the bracket to the vehicle frame which allows rotation about an axis (e.g., that of 42) spaced from the axis of the support arm, the elongated support arm being mounted to the bracket with a releasable mount (figure 3). The reference to Mortvedt et al. fails to teach a bracket which allows an adjustment of length having first and second portions, connectable together via a fastener, including mating pairs of serrations on opposing sides of the opening through which the fastener extends. Takahashi et al. teach a mounting bracket for a vehicle wherein the bracket includes an elongated support arm (32) adapted to be mounted to a vehicle element and defining a longitudinal axis, a length-adjustable link connection (e.g., 4, 6, 7, 8, 10) having a first bracket portion (3) connected to the elongated arm and a second bracket portion (2) adapted to be rotatably connected (through mounting fastener 22) to a vehicle portion (not illustrated), wherein the offset spacing between the arm longitudinal axis and rotational axis may be adjusted by adjusting the length of the link, there being provided a releasable fastener (7, 8) which extends through respective first and second openings (11) in the bracket portions, the fastener including a nut portion (8) having a threaded interior and a collar portion (abutting the bracket), each bracket having a face (4) with a serration, the serrations meshing when the fastener is not released, the serrations comprising a region of

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parallel, spaced serrations (either side of opening 11), the second bracket having a further (third) opening (interior of 20) which receives the mounting fastener (22), which may pass through a vehicle element, connected to a vehicle frame, such as an aperture or threaded aperture, the second bracket having a collar (20) which surrounds the third opening, and wherein an end plate (5) is connected to the collar, one side of the end plate forming a corresponding serrated face, the end plate further having a gusset (10) connecting the end plate and collar. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the bracket portion (38) taught by Mortvedt et al. adjustable using the structure set forth by Takahasi, for the purpose of allowing the angle of the fender to be adjusted.

8. Claims 6, 7, 9, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortvedt et al. in view of Takahashi et al. and Burrell et al. (US 3,765,636). The references to Mortvedt et al. and Takahashi et al. are discussed above and fail to teach the base of the bracket portion carrying the nut as having channel flanges wherein the base of the nut is approximately the same size as the spacing between the channel flanges. Burrell et al. teach an old and well known mechanical fastening arrangement wherein a nut (proximate end of 47, figure 2) is positioned between a pair of flanges (44) spaced so as to be approximately the same size as the nut. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a pair of spaced flanges on the sides of the nut of the fastening arrangement of Mortvedt et al. as modified by Takahashi et al., in view of the arrangement shown by Burrell et al., for the purpose of preventing rotation of the nut when the fastener is being tightened. As regards the particular surface area of the nut (claim 7), it is well known in the fastening arts to adjust the engaging faces of fasteners to provide a desired clamping force on a particular piece of material, and it would have been obvious to one of ordinary skill in the art at the time of the invention to adjust the size of the nut to create a desired level of clamping of the two elements. As regards the particular shape of the nut (claim 10), both square and hex nuts, having a footprint comprising 4 and 6 linear edges, respectively, are very well known in the fastening fields and as such it would have been obvious to one of ordinary skill in the art at the

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time of the invention to use a square nut in place of a hex nut for the purpose of providing a nut having a greater surface area on its wrench-engaging portions.

9. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mortvedt et al. in view of Takahashi et al. and Rowland (US 5,511,808). The references to Mortvedt et al., and Takahashi et al. are discussed above and fail to teach the provision of a vibration decoupling coupler connected between the support arm and the fender. Rowland teaches a vibration decoupling device (20) positioned between a fender mount (26) and a support (38) on a vehicle. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a vibration decoupling member such as taught by Rowland between the fender and arm of the vehicle of Mortvedt et al. as modified by Takahashi et al. (e.g., between the fender portion 26 and mounts 52) for the purpose of reducing vibration.

#### **Allowable Subject Matter**

10. Claims 12, 20, 22-24, 26-29 and 40-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all limitations of the base claim and any intervening claim(s).

#### **Response to Comments/Arguments**

11. Applicant's arguments concerning the combination of the references to Laubach and Zieske as set forth in the Brief have been carefully considered and are persuasive. The examiner agrees that the rejections based on this combination of references should be withdrawn. Note the reference to Takahashi, in particular, as applied against certain of the pending claims. The examiner apologizes for any inconvenience associated with the late citing of this reference.

#### **Conclusion**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is 703-308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-1113.

A response to this action should be mailed to:

Mail Stop \_\_\_\_\_  
Commissioner for Patents

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P. O. Box 1450  
Alexandria, VA 22313-1450,

Or faxed to one of the following fax servers:

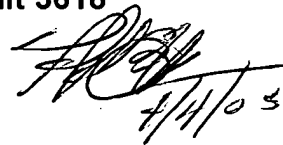
Regular Communications/Amendments: 703-872-9326

After Final Amendments: 703-872-9327

Customer Service Communications: 703-872-9325

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**



Handwritten signature of F. Vanaman, dated 4/11/03.